

STATE OF INDIANA - COUNTY OF VIGO
IN THE VIGO SUPERIOR AND CIRCUIT COURTS

**Notice of Adoption of Local Rules
of Practice and Procedure
effective January 1, 2009**

Following the thirty (30) day comment period required by Trial Rule 81(B), the courts of record for Vigo County have adopted the following the local rules, effective January 1, 2009, repealing all other local court rules currently in effect. Local Rules LR84-TR79-18, LR84-CR2.2-2, LR84-AR01-2, and LR84-AR15-6 all require Supreme Court approval and may not take effect until approved by the Supreme Court.

Judge Michael H. Eldred
Vigo Superior Court, Div 1

Judge Phillip I. Adler
Vigo Superior Court, Div 2

Judge David R. Bolk
Vigo Superior Court, Div 3

Judge Christopher Newton
Vigo Superior Court, Div 4

Judge Barbara L. Brugnaux
Vigo Superior Court, Div 5

Judge Michael J. Lewis
Vigo Superior Court, Div 6

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LOCAL RULES OF PRACTICE AND PROCEDURE FOR THE VIGO CIRCUIT AND SUPERIOR COURTS

Section I: ORGANIZATION OF COURTS AND SCOPE OF RULES

(A) The Vigo Superior Court shall be comprised of six (6) divisions as follows: Division 1, Division 2, Division 4, Division 5, Division 6 and Division 3, which also serves as the Vigo Circuit Court and the Vigo Juvenile Court to which there is appointed a Juvenile Court Magistrate.

(B) These rules apply to procedure and administration of all the Vigo Courts except: (1) where in conflict with specific statutory provisions or the Rules of the Indiana Supreme Court, or (2) when the Court is conducting small claims proceedings, except as provided in LR84-TR55-16. ~~Small Claims proceedings shall be conducted pursuant to the Indiana Rules for Small Claims.~~

Section II: CIVIL RULES OF PROCEDURE

LR84-TR3.1-1 Appearance and Withdrawal of Appearance

(A) All pleadings shall show the name and address, telephone number, fax number and attorney number of the individual attorney or attorneys filing the pleading. All attorneys for a defendant or a third party shall file a written appearance for such defendant or third party. Any pleading not signed by at least one (1) attorney appearing of record as required by T.R. 11 shall not be accepted for filing by the Clerk of the Court or, if inadvertently accepted for filing, shall, upon discovery of such omission, be stricken from the record. All appearance forms must be substantially in compliance with the requirements for appearance forms as set out by the Indiana Supreme Court.

(B) Counsel desiring to withdraw their appearance in any action shall file a written petition requesting leave of Court to do so. Permission to withdraw shall be given only after the withdrawing attorney has given his or her client ten (10) days written notice of the attorney=s intention to withdraw and has filed a copy of such notice with the Court. The notice of withdrawal shall explain to the client that failure to secure new counsel may result in dismissal of the client=s case or a default judgment may be entered against the client, whichever is appropriate, and other pertinent information such as trial setting date or any other hearing date. The Court will not grant a request for withdrawal of appearance unless the request has been filed with the Court at least thirty (30) days prior to any scheduled hearing or trial date, except for good cause shown as determined by the Court. All withdrawals of appearance shall comply fully with the provisions of Rules of Professional Conduct, Rule 1.16.

(C) A withdrawal of appearance when accompanied by the simultaneous entry of appearance by substitute counsel shall constitute a waiver of the requirements of Paragraph (B) of this rule.

(D) This rule shall apply to all probate pleadings.

LR84-TR5-2 Bankruptcy Notice of Stay

Whenever any party receives an order from a Bankruptcy Court staying proceedings, it shall be sufficient for such party to file a notice of such order with the Court. Such notice shall contain the name of the party, the cause number in bankruptcy and the date of the issuance of the stay.

LR84-TR6-3 Initial Enlargements of Time

In every civil action pending in this Court in which a party wishes to obtain an initial enlargement of time not exceeding thirty (30) days within which to file a responsive pleading or a response to a written request for discovery, the party shall contact counsel for the opposing party and solicit opposing counsel=s agreement to the extension. In the

event opposing counsel does not object to the extension or cannot with due diligence be reached, the party requesting the extension shall document the lack of objection by notice to opposing counsel and send a copy of the notice to the Clerk of the Court, which notice shall be filed of record in the case. No further filings with the Court nor action by the Court shall be required for the extension.

LR84-TR7-4 Motion Practice

(A) Form and Notice. Each motion shall be separate; alternative motions filed together shall each be named in the caption on the face. When a motion requires notice, the serving of the copy of the motion upon the other parties in the cause shall constitute notice of filing same. A movant shall file an original form of proposed order along with sufficient copies to serve all parties of record.

(B) Oral Arguments on Motions and Other Pleadings. A request for oral argument on a motion shall be by separate instrument and timely served and filed with the brief, answer brief, or reply brief, except as otherwise provided. Failure to file a timely request for oral argument will constitute a waiver of oral argument. The granting of a motion for oral argument, except as mandated by the Trial Rules Motions (e.g. summary judgment and 41(E) motions) shall be wholly discretionary with the Court. The Court, upon its own initiative, may also direct that oral argument be had. The request for oral argument shall set forth specifically the purpose of the request and an estimate of the time reasonably required for the Court to devote to the argument. An oral argument shall not include the presentation of evidence.

(C) Enlargement of Time. An initial written motion for enlargement of time pursuant to T.R.6(B)(1) to respond to a claim shall be automatically allowed for an additional thirty (30) days from the original due date without a written order of the Court. Any motion filed pursuant to this Rule shall state the date when such response is due and the date to which time is enlarged. The motion must be filed on or before the original due date or this Rule shall be inapplicable. All subsequent motions shall be so designated and will be

granted only for good cause shown.

(D) Briefs and Memoranda Regarding Motions.

(1) A Motion to Dismiss under Rule 12 of the Indiana Rules of Trial Procedure, for judgment on the pleadings, for more definite statement, to strike, or motions made pursuant to Rule 37 of the trial rules shall be accompanied by a separate supporting brief.

Any brief or memorandum in support of any motion shall accompany or be filed simultaneous with the motion, and a copy shall be promptly served upon the opposing party. If the opposing party desires to file a brief or memorandum, that party must do so within thirty (30) days of service of the movant's brief or memorandum. If the moving party desires to file a reply brief or memorandum, that party must do so within seven (7) days of service of the response, brief or memorandum. Time shall be computed as provided in Rule 6, Indiana Rules of Trial Procedure. Extensions of time shall be granted only by order of the assigned or presiding Judge for good cause shown. Failure to file an answer brief in opposition to a motion within the time prescribed shall subject the motion to summary ruling.

(2) Except by permission of the Court, no brief shall exceed twenty (20) pages in length (exclusive of any pages containing a table of contents, table of authorities, and appendices), and no reply brief shall exceed ten (10) pages. Permission to file briefs in excess of these page limitations will be granted only upon motion supported by extraordinary and compelling reasons. Briefs exceeding twenty (20) pages in length (exclusive of any pages containing the table of contents, table of authorities, and appendices) shall contain:

- (i) a table of contents with page reference;
- (ii) a statement of issues; and
- (iii) a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited. If a party relies upon a legal decision not published in North Eastern Reporter 2d, or on a statute or

regulation not found in the current publication of the United States Code, the Indiana Code, or the Indiana Administrative Code, then the party shall furnish the Court and all counsel of record with a copy of the relied-upon decision, statute, or regulation.

(E) Motions to Strike or to Insert New Matter. Subject to T.R. 12(F) every motion to insert new matter or to strike out any part of any pleading in a cause shall be made in writing and shall set forth verbatim each set of words to be inserted or stricken. Each set of words to be inserted or stricken shall be designated in a separate specification, numbered consecutively.

LR84-TR16-5 Pre-Trial Procedure

In all civil tort cases on the plenary docket, after the issues have been closed on the merits and the Court has determined jurisdiction is proper, the Court shall enter an initial pre-trial order substantially as follows:

COURT=S INITIAL PRE-TRIAL ORDER

Pursuant to Trial Rule 16 of the Indiana Rules of Trial Procedure, and LR84-TR16-5, the Court enters the following initial pre-trial order:

- (A) The Court finds that the issues have been closed and makes a preliminary determination that jurisdiction is proper.
- (B) The Court ORDERS the parties immediately to commence such discovery as may be needed for the parties to mediate this matter.
- (C) The Court ORDERS each party to file and serve on all other parties a preliminary witness and exhibit list no later than thirty (30) days after entry of this Order. Parties not complying with this Order shall be subject to sanctions.

- (D) The Court ORDERS the parties to file, either jointly or separately, a pre-trial report no later than one hundred twenty (120) days after entry of this Order. The pre-trial report shall contain the following information:
- (1) A brief summary of the nature of the case (including any non-binding observations about whether liability is contested);
 - (2) An estimate of days required for trial;
 - (3) An agreement, if any exists, as to the parties' selection as mediator;
 - (4) An estimate as to additional time needed to complete discovery necessary for trial;
 - (5) An amended list of witnesses and exhibits necessary for trial;
 - (6) Any anticipated pre-trial motions, including dispositive motions (such as motions to dismiss or for summary judgment) and anticipated trial motions such as motions in limine);
 - (7) A summary of any stipulations proposed (or with respect to which the parties have agreed).
- (E) The pre-trial report ordered under paragraph (D) is a prerequisite to a scheduling conference at which a trial date is assigned.
- (F) Upon filing the mandatory pre-trial report, either party may request the court to schedule a telephone conference for determination of a trial date. The Court will then enter a formal pre-trial order setting forth final deadlines for discovery,

disclosure of contentions, witnesses, and exhibits, pre-trial motions, and such other matters as the Court deems necessary in management of the case.

- (H) Nothing in this Order shall preclude the parties from accelerating discovery as appropriate or convening mediation prior to filing a pre-trial report. A party shall not, however, request a pre-trial conference or scheduling conference without complying with this Order.
- (K) Upon a showing to the Court that any party failed to exercise good faith within the parameters of this Order, the Court shall have the authority to enforce sanctions.

LR84-TR16-6 Mediation

(A) In all civil tort cases on the plenary docket where a timely demand for jury trial is made, parties are required to complete mediation of the case no later than sixty (60) days before the case goes to trial.

(B) Mediator selection shall be governed by A.D.R. Rule 2.4. The Court shall maintain a roster of Mediators approved by the Indiana Supreme Court Commission for Continuing Legal Education. If the parties are unable to agree upon a mediator pursuant to A.D.R. Rule 2.4, the parties shall submit said fact to the Court and the Court shall name a panel of three (3) from which the parties shall strike. The party that initiated the action shall strike first. The parties shall have ten (10) days to strike from the panel of mediators named by the Court. In the event the parties fail to select a mediator hereunder, the Court shall name the mediator.

(C) Parties are required to have present or immediately available by telephone at the mediation all persons who have the authority to resolve the case. When a party has insurance coverage that is subject to payment of any settlement or judgment that might be had in said case, then the insurance company shall have someone present or immediately

available by telephone who has the authority to settle the case.

(D) Upon a showing to the Court that any party failed to exercise good faith within the parameters of this Rule, the Court shall have the authority to enforce sanctions.

(E) Notwithstanding the foregoing, a party may file a motion reciting that mediation would be futile or non-productive, citing the reasons therefore, and requesting relief from the requirements of this rule.

LR84-TR26-7 Discovery in General

(A) Time Limit. Counsel are expected to begin discovery promptly. In all cases, discovery shall be completed prior to the pre-trial conference unless otherwise ordered by the Court. Any physical or mental examination of a party pursuant to T.R. 35 must be completed no later than sixty (60) days prior to the discovery cut-off set by the Court.

(B) Extensions of Time. For good cause shown and prior to the expiration of the time within which discovery is required to be completed, time may be extended for completion of discovery. Motions and stipulations for additional time for completion of discovery must set forth reasons justifying the additional time. Stipulations extending the discovery period must be approved by the Court.

(C) Filing. All discovery requests, including third party Requests for Production under T.R. 34(C), to be served upon another party shall not be filed with the Court. The person serving such discovery requests shall notify the Court in writing of the service of such discovery requests and the date upon which answers are to be made. Answered interrogatories and any objections thereto shall be filed with the Court by the person having the burden of answering or objecting, within the time provided by Indiana Trial Rules of Procedure or within such other time as the Court may allow.

LR84-TR30-8 Depositions

Depositions shall be governed by T.R. 30. Video tape or other mechanically reproduced tapes as allowed by T.R. 74, shall be admissible to the same degree as any other depositions. A transcript of the testimony elicited in the video tape shall accompany all videotaped depositions filed with the Court. A party may take the deposition of an expert or treating physician, timely listed on a party's witness list, after the cut off of discovery if the purpose of the same is for the presentation of the deposition at trial.

LR84-TR32-9 Deposition of Expert

The deposition of an expert or treating physician taken for the purpose of presentation of the deposition at trial shall be admissible, if otherwise ruled to be admissible by the Court, without the necessity of a party showing the unavailability of the expert to personally appear at trial.

LR84-TR33-10 Interrogatories

(A) Form. Interrogatories shall be tailored specifically to each cause in which they are filed. No fill-in the blank or photocopied forms containing interrogatories shall be filed or served upon a party unless all interrogatories on such forms are consecutively numbered and applicable to the case in which the same are filed and served. The intent and purpose of this rule is to prohibit the filing of fill-in the blank or photocopied forms of interrogatories except where the nature of the case or the number of the parties makes the use of such forms necessary and feasible.

(B) Answers and Objections. Answers or objections to Interrogatories under Trial Rule 33 shall set forth in full the interrogatory being answered or objected to immediately preceding the answer or objection. Any objection to an interrogatory must clearly state in detail the legal basis upon which it is made, or the objection will be waived.

(C) Number Limited. The number of interrogatories shall be kept to a reasonable limit and shall not require the answering party to make more than one hundred twenty-five (125) responses. For good cause shown and upon leave of Court, additional

interrogatories may be propounded if the Court finds this limitation would work a manifest injustice or would be impractical because of the complexity of the issues of the case. Interrogatories shall be used solely for the purpose of discovery and shall not be used as a substitute for the taking of a deposition.

LR84-TR37-11 Motions to Compel Discovery

To curtail undue delay in the administration of justice, this Court shall refuse to rule on any and all motions for discovery and production of documents under T.R. 26 through T.R. 37, unless moving counsel shall first advise the Court in writing that after personal consultation and sincere attempts to resolve differences, they are unable to reach an accord. This statement shall recite, in addition, the date, time and place of such conference, and the names of all parties participating therein. If counsel for any party advises the Court in writing that opposing counsel has refused or delayed meeting and discussion of the problems covered in this subsection, the Court may take such actions as are appropriate to avoid delay.

The Court shall, if it finds that the party to whom the interrogatories or request were directed has not responded within the time allowed, and that the moving party has complied with Trial Rule 26(F) and this section, order the non-responding party to respond within a period of time not less than ten (10) days after entry of the Court's order. The Court may, upon written request and for good cause shown, shorten or extend such time as it deems appropriate.

LR84-TR40-12 Trials

(A) Setting Cases for Trial. No trial date will be set unless a pretrial report pursuant to LR84-TR16-5 has been filed.

(B) All counsel of record shall be advised promptly by the Court or Clerk of the Court as to the date and time of trial settings, either by individual notice or by providing copies of trial calendars, as the Court may direct.

(C) When more than one (1) case is set for trial on a given trial date, the case set for second or third shall be required to stand for trial if counsel are given fourteen (14) calendar days notice that the case first set has been settled.

(D) The parties shall immediately notify the Court of any reasonably anticipated settlement of a case.

LR84-TR51-13 Jury Instructions

(A) All requests for instructions submitted in accordance with Trial Rule 51 shall be submitted to the Court and exchanged with opposing counsel not later than the beginning of trial. Any proposed instruction which is not an Indiana Pattern Jury Instruction and all 1.03 Issue instructions shall be submitted to the Court and exchanged with opposing counsel not later than five (5) days prior to trial. Counsel shall have the right to submit additional instructions during trial on matters which could not reasonably have been anticipated in advance of trial. Such requests for special instructions shall contain citations to supporting authorities. All instructions submitted to the Court shall also either be submitted on an electronic disk compatible with the Court's computer in order that the Court's staff may duplicate the instructions or with an additional set of instructions designated as Court=s Instructions without showing authority for the instruction or the party submitting the instruction.

(B) Indiana Pattern Jury Instructions shall be used where applicable.

LR84-TR53.4-14 Motion to Reconsider Rulings

A motion to reconsider a ruling of the Court on any motion must be in writing and must be served personally upon the ruling Judge. A motion to reconsider must be filed within fifteen (15) days of the ruling.

LR84-TR53.5-15 Motions for Continuance

Motions for Continuance are discouraged. Neither side is entitled to an automatic continuance as a matter of right.

(A) Upon verified motion, civil actions may be postponed or continued in the discretion of the Court. The Court may award such costs as will reimburse the other parties for their actual expenses incurred from the delay. A motion for continuance shall state whether opposing counsel objects to the motion and whether prior continuances have been requested by the moving party. The Court may require any written Motion for Continuance to be signed by the party requesting the continuance.

A motion to postpone a civil trial based on the absence of evidence can be made only upon affidavit showing: the materiality of the evidence expected to be obtained; that due diligence has been used to obtain it; where the evidence may be; and, if it is for an absent witness, the affidavit must show the name and residence of the witness, if known, and the probability of procuring the testimony within a reasonable time, and that his/her absence has not been procured by the act or connivance of the party, nor by others at the party=s request, nor with his/her knowledge or consent; and what facts the party believes to be true, and that he/she is unable to prove such facts by any other witness whose testimony can be as readily procured.

If the adverse party will stipulate to the content of the evidence that would have been elicited at trial from the absent document or witness, the trial shall not be postponed. In the event of a stipulation, the parties shall have the right to contest the stipulated evidence to the same extent as if the absent document or witness were available at trial.

(B) Time for Filing. Motions for Continuance must be filed as soon after the cause for continuance or delay is discovered by the party seeking the continuance, and no later than fourteen (14) days before the date assigned for trial, unless the reason therefor is shown by affidavit to have occurred within the fourteen (14) day period.

(C) Title of Motion. A Motion for Continuance, whether it is plaintiff=s or defendant=s motion, shall denominate whether it is the First (1st), Second (2nd), Third (3rd), etc. Motion for Continuance filed by plaintiff or defendant.

(D) Dispositive Motions. The filing of a dispositive motion shall not constitute good cause for a Motion for Continuance of a trial if the time requirements governing such motion will not allow for the resolution of the motion prior to the date of trial.

LR84-TR55-16 Affidavit of Debt and Attorney Fees in Default Judgments

(A) On all default judgments relating to commercial cases (except small claims) plaintiff or his counsel must submit an affidavit of debt and an affidavit in support of attorney fees requested by counsel. The affidavit for attorney=s fees shall set forth the number of hours spent on the case and the hourly charge.

(B) In small claims cases, a request for attorney fees up to \$300.00 will be considered reasonable. Any request for attorney fees over that amount must be supported by an affidavit setting forth the number of hours spent on the case and the hourly charge.

LR84-TR73-17 Telephonic Conference

Although not favored, the Court, on its own motion or at a party's request, may direct argument of any motion be by telephone conference. At the conclusion thereof, the Court may announce its order orally or may take the matter under advisement; but in either event, any order issued thereon shall be reduced to writing and a copy sent to the parties.

The Court may further direct which party shall arrange and pay for the cost of the telephone calls.

TR84-TR79-18 Local Reassignment Rules

Rule 1

A Presiding Judge shall administer reassignment of cases pursuant to T.R. 79(H) in Administrative District. The Presiding Judge shall be determined by seniority of sitting Judges and Magistrates in District 7, beginning with that Judge with the longest tenure. The initial Presiding Judge=s term shall commence October 1, 1995, and terminate December 31, 1996. All subsequent terms shall be for one calendar year. Should a Presiding Judge leave the bench during the term, the Judge with the next following seniority shall fulfill the balance of that term as well as the entirety of the next term. A Judge may not refuse to serve as Presiding Judge.

Rule 2

The Presiding Judge shall maintain a record of the cause number of each case certified for reassignment for the year of his or her service documenting the Judge who certified the case and the Judge to whom the case was reassigned. The Presiding Judge shall reassign Judges, Senior Judges (if they consent to Special Judge status) and Magistrates in District 7 to cases pursuant to these rules. The Presiding Judge shall submit a written semi-annual report to all District 7 Judges and Magistrates no more than ten (10) days following the end of the first and third quarters of each calendar year. The Presiding Judge may assign, to local court support staff, administrative duties to assist in fulfilling these responsibilities.

Rule 3

The District Judges and Magistrates shall certify to the Presiding Judge cases for reassignment pursuant to Trial Rule 79 (H). The certification shall include a prepared order of appointment, as exhibited in Appendix A. When the Presiding Judge receives certification requiring reassignment, the Presiding Judge shall appoint a Judge or Magistrate in the following manner:

A. At the beginning of each calendar year, the Presiding Judge shall create a list of all judicial resources in District 7. Upon receiving certification, the Presiding Judge shall assign that case to the first eligible Judge or Magistrate on that list. The District will follow the principle that each Judge or Magistrate will receive a new case for each case from which he or she has been removed - a one-off, one-on formula.

B. Sullivan County Judges shall not be eligible for assignment of cases from Parke, Putnam, and Vermillion Counties. Parke, Putnam, and Vermillion County Judges shall not be eligible for assignment to cases from Sullivan County.

The order of appointment shall be filed in the Court from which the case originated. The order of appointment shall constitute acceptance, and neither oath nor additional evidence of acceptance is required.

Rule 4

A Senior Judge may elect to participate in District 7 reassignment by petitioning the Presiding Judge, in writing, no later than January 1 of any calendar year indicating that the Senior Judge wishes to participate in that year. The Senior Judge will then be subject to the same rules as a Special Judge. His or Her credit for Senior Judge service is not controlled by these rules.

Should there be an appointment of a Judge Pro Tempore in any court within the 7th Judicial District, for a period of time that exceeds three months, the appointed Judge Pro Tempore may serve as a Special Judge pursuant to Trial Rule 79 (H) of the Indiana Rules of Trial Procedure. It is first necessary to obtain authorization in the original order of appointment for a Judge Pro Tempore issued by the Supreme Court. When the duly elected Judge assumes jurisdiction again, the case which had been assigned to the Judge Pro Tempore and which is not yet resolved, will remain within the same Court of jurisdiction and become part of the duly elected Judge=s docket.

Rule 5

When a Judge or Magistrate vacates the bench and applies for certification as Senior Judge, that Judge shall retain jurisdiction on all previously existing Special Judge cases as provided by Administrative Rule 5. In the event the Judge or Magistrate vacates the bench and is not certified as a Senior Judge, then the successor Judge shall assume jurisdiction over all previous Special Judge cases of the vacating Judge or Magistrate.

When a Judge or Magistrate vacates the bench, the county's judicial personnel shall first attempt a method by which conflicts of interest of the Successor Judge are absorbed within the county without undue hardship. Additionally, the Successor Judge shall request approval from the Indiana Supreme Court or Indiana Judicial Qualifications Commission Council to utilize disclosure rather than recusal in potential conflicts of interest cases. In the event the vacating Judge or Magistrate becomes certified as a Senior Judge, then a request will be made to the Indiana Supreme Court to allow the Senior Judge to exercise jurisdiction over those cases which a Successor Judge has a conflict of interest provided that the service is credited towards the Senior Judge status.

LR84-TR00-19 Custody and Disposition of Models and Exhibits

(A) Custody. After being marked for identification, models, diagrams, exhibits and material offered or admitted in evidence shall be placed in the custody of the court reporter unless otherwise directed by the Court.

(B) Removal. All models, diagrams, exhibits or material placed in the custody of the court reporter shall be taken away by the parties offering them in evidence except as otherwise ordered by the Court within sixty (60) days after the case is decided, unless an appeal is taken. In all cases in which an appeal is taken, they shall be taken away within sixty (60) days after the appeal is concluded. At the time of removal, a detailed receipt shall be given to the court reporter and filed in the cause.

(C) Neglect to Remove. If the parties or their attorneys shall neglect to remove models, diagrams, exhibits, or material within thirty (30) days after notice from the court reporter, the items shall be sold by the Sheriff at public or private sale or otherwise disposed of as the Court may direct. If sold, the proceeds, less the expense of the sale, shall be paid into the general fund of the county.

LR84-TR00-20 Withdrawal of Original Records and Papers

(A) No person shall withdraw any original pleading, paper, record, model or exhibit from the custody of the clerk or other officer of the Court having custody thereof except: (1) upon order of a judge of this Court, and (2) upon leaving a proper receipt with the clerk or officer.

(B) No person shall remove any books from the Court or Judge=s chamber except upon leaving a proper receipt with a member of the Judge=s staff.

Section III: FAMILY LAW RULES

LR84-FL00-1 Dissolution of Marriage with Minor Children

(A) Both parties in any cause of action for Dissolution of Marriage in which there are minor children shall attend a workshop entitled "Children Cope With Divorce". Attendance is mandatory for both parties if there are unemancipated children under eighteen (18) years of age. The four-hour course must be completed prior to the final hearing. The parties are responsible for paying the costs of this program which is forty-five dollars (\$45.00) per person, with an allowance for waiver of the fee for indigence.

(B) The parties are to contact the Family Service Association, 619 Cherry Street, Terre Haute, Indiana 47807, telephone (812) 232-4349, to make an appointment to attend the workshop. The petitioner shall contact the Family Service Association within fifteen (15) days of filing the Petition for Dissolution of Marriage, and the respondent shall

contact the Family Service Association within fifteen (15) days of receiving notice of this rule.

(C) The Clerk shall provide a copy of this rule to petitioner at the time of filing of a petition for dissolution of marriage.

(D) Failure to complete the workshop may result in a party having to show cause why he or she should not be held in contempt of Court.

(E) The Sheriff of Vigo County shall serve a copy of this rule on the respondent when the petition is served and shall make due return thereon.

84LR-FL00-2 Dissolution of Marriage Mediation Workshop

(A) If the petitioner and respondent, at the time of the filing of a Dissolution of Marriage action, are proceeding without an attorney to represent them, and they have a child or children as a result of the marriage or their relationship, they shall contact the Dispute Resolution Center for the Wabash Valley, telephone (812) 235-7409, to make an appointment to attend a Mediation Consultation Workshop. The petitioner shall contact the Dispute Resolution Center within seven (7) days of filing the Petition for Dissolution of Marriage, and the respondent shall contact the Dispute Resolution Center within seven (7) days of receiving notice of this rule.

(B) There shall be no charge to the parties for participation in this workshop, the purpose of which is to acquaint the parties with the process of mediation, and to assist them in determining whether mediation could be helpful to them in identifying, addressing and resolving issues in their dissolution of marriage action.

(C) The Clerk shall provide a copy of this rule to petitioner at the time of filing of a petition for dissolution of marriage.

(D) The Sheriff of Vigo County shall serve a copy of this rule on the respondent when the petition is served and shall make due return thereon.

(E) The Dispute Resolution Center shall make due report to the Court in which the Dissolution of Marriage action is pending regarding the parties' attendance and the results of the workshop program.

Section IV: CRIMINAL RULES

LR84-CR2.1-1 Withdrawal of Appearance

(A) Except as otherwise provided in this rule, withdrawal of representation of a defendant in criminal cases may not be granted except upon hearing conducted in open court on record in the presence of the defendant. Withdrawal of appearance will be allowed without compliance with the requirements of this rule if the reason for withdrawal is the inability to locate and communicate with the defendant; in such event, a warrant shall forthwith be issued for the arrest of the defendant.

(B) A hearing in open court will not be required where other counsel has entered an appearance, the substitution of counsel will not cause a delay in the proceedings and the defendant has either consented to or requested the substitution of counsel in writing.

LR84-CR2.2-2 Criminal Case Assignments

(A) Except as provided for in paragraph (B) and (C) below, the following rotation for felony cases is adopted for Superior Court Division 1, Circuit/Superior Court Division 3, and Superior Court Division 6, and is based upon the time of the occurrence of the offense:

(1) Offenses occurring between 12:01 A.M. on the first day of each month through midnight on the 7th day of each month will be assigned to Superior Court, Division 1.

- (2) Offenses occurring between 12:01 A.M. on the 8th day of each month through midnight of the 15th day of that month will be assigned to Circuit/Superior Court Division 3.
 - (3) Offenses occurring between 12:01 A.M. on the 16th day of each month through midnight of the last day of that month will be assigned to Superior Court Division 6.
 - (4) In the case of multiple offenses, the date of the earliest offense alleged in the charging document shall assign the rotation date and assignment of the court. If a case involves both felony and misdemeanor charges, the case shall be considered a felony for application of this rule.
- (B) All criminal misdemeanor and Class D Felonies arising out of domestic relations shall be assigned to Superior Court Division 4.
- (C) All criminal misdemeanor and Class D Felonies relating to controlled substances and Class C Felony controlled substance cases which the prosecutor deems appropriate for Drug Court shall be assigned to Superior Court Division 5. All criminal misdemeanor and D felonies relating to the operation of a motor vehicle shall be assigned to Superior Court Division 5. Habitual Traffic Violator charges filed as Class C felonies shall be assigned to Superior Court Division 5.
- (D) The following rotation for criminal misdemeanor offenses is adopted for Superior Court Division 4 and Superior Court Division 5:
- (1) Misdemeanor offenses occurring between 12:01 A.M. on the first day of each month through midnight on the 15th day of each month will be assigned to Vigo Superior Court Division 4.

- (2) Misdemeanor offenses occurring between 12:01 A.M. on the 16th day of each month until midnight on the last day of that month will be assigned to Vigo Superior Court Division 5.
- (3) In the case of multiple offenses, the date of the earliest offense alleged in the charging document shall assign the rotation date and assignment of the court. If a case involves both felony and misdemeanor charges, the case shall be considered a felony for application of this rule.
- (E) A judge of the Circuit or Superior Courts, by appropriate order entered in the record of judgments and orders, may transfer and reassign a case to any other court of record in the county with jurisdiction to hear the charged offense subject to acceptance by the receiving court.
- (F) When the State of Indiana dismisses a case and chooses to re-file that case, the case shall be assigned to the court from which the dismissal was taken.
- (G) In the event additional charges are filed against a criminal defendant subsequent to the assignment of the case, all such additional charges shall be assigned to the court of initial assignment.
- (H) (1) In the event a change of judge is granted or it becomes necessary to assign another judge in any criminal proceeding in Superior Court Division 1, the case shall be reassigned to either Superior Court Division 3 or Superior Court Division 6 on a rotating basis. If the receiving judge cannot accept jurisdiction the case shall be reassigned to the alternative court. If the judges of Superior Court Division 3 and Superior Court Division 6 cannot accept jurisdiction, the case will then be reassigned to either Superior Court Division 4 or Superior Court Division 5, on a rotating basis.

- (2) In the event a change of judge is granted or it becomes necessary to assign another judge in any criminal proceeding in Superior Court Division 3, the case shall be reassigned to either Superior Court Division 1 or Superior Court Division 6 on a rotating basis. If the receiving judge cannot accept jurisdiction the case shall be reassigned to the alternative court. If the judges of Superior Court 1 and Superior Court Division 6 cannot accept jurisdiction, the case will then be reassigned to either Superior Court Division 4 or Superior Court Division 5, on a rotating basis.
- (3) In the event a change of judge is granted or it becomes necessary to assign another judge in any criminal proceeding in Superior Court Division 4, the case shall be reassigned, first, to the judge of Superior Court Division 5. If the judge of Superior Court Division 5 cannot accept jurisdiction, the case will then be reassigned to either Superior Court Division 1, Superior Court Division 3 or Superior Court Division 6 on a rotating basis.
- (4) In the event a change of judge is granted or it becomes necessary to assign another judge in any criminal proceeding in Superior Court Division 5, the case shall be reassigned, first, to the judge of Superior Court Division 4. If the judge of Superior Court Division 4 cannot accept jurisdiction, the case will then be reassigned to either Superior Court Division 1, Superior Court Division 3 or Superior Court Division 6 on a rotating basis.
- (5) In the event a change of judge is granted or it becomes necessary to assign another judge in any criminal proceeding in Superior Court Division 6, the case shall be reassigned to either Superior Court Division 1 or Superior Court Division 3 on a rotating basis. If the receiving judge cannot accept jurisdiction the case shall be reassigned to the alternative court. If the judges of Superior Court 1 and Superior Court Division 3 cannot accept

jurisdiction, the case will then be reassigned to either Superior Court Division 4 or Superior Court Division 5, on a rotating basis.

- (I) In the event no judge is available for assignment or reassignment of a felony or misdemeanor case, such case shall be certified to the Indiana Supreme Court for appointment of a Special Judge. In the event the judge presiding in a felony or misdemeanor case concludes that special circumstances presented in such proceeding require appointment by the Indiana Supreme Court of a Special Judge, the presiding judge may request the Indiana Supreme Court make such appointment.
- (J) This rule does not prohibit the filing of appropriate criminal offenses in the Terre Haute City Court to the extent of its jurisdiction.

LR84-CR00-3 Bail

(A) Persons arrested for a non-violent misdemeanor shall be released on their own recognizance unless they do not reside in the State of Indiana. Except in the case of judicial order otherwise, the Sheriff shall have the authority and discretion to detain a person under the influence of intoxicating beverages or drugs until such time as that person may be safely released.

(B) At the time each person is released on his own recognizance, he will be required to furnish data concerning his address, phone number, social security number, driver=s license, employer=s name and address, and, if under twenty-one (21) years of age, his parents= name, address and phone number.

(C) A person charged with a criminal offense (felony or misdemeanor) may post bond in the amount shown in the bail bond schedule, which schedule shall be posted in the jail and in the clerk=s office, in one (1) of four (4) ways:

- (1) Surety bond
- (2) Real property bond
- (3) Full cash bond, or
- (4) By depositing with the Clerk of the Court, cash in the amount of ten percent (10%) of the bond set by the Court (unless the Court, in its discretion, prohibits such procedures).

(D) Except as provided in Paragraph (A), no bond may be posted without approval of a Judge of the Superior Court. If the defendant posts bail by depositing the full cash amount, the defendant and each person who makes the deposit on behalf of the defendant shall execute an agreement that allows the Court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the Court may order the defendant to pay if convicted.

(E) When the conditions of the bond, as provided in Paragraph (C), have been performed and an order is entered discharging the bond, if the bond has been posted under (C)(4), the Clerk shall retain ten percent (10%) of the amount deposited or fifty dollars (\$50), whichever is the lesser amount, as an administrative fee, which money shall be paid into the General Fund of the County. The amount retained by the Clerk as bond costs shall be not less than Ten Dollars (\$10.00). The Clerk shall also retain from the deposit such fines, costs, fees, and restitution as ordered by the court, publicly paid costs of representation as ordered by the court, and the five dollar (\$5) fee required by IC.35-33-8-3.2(d). The balance of the amount of the deposit shall be remitted to the person making the deposit.

LR84-CR00-4 Public Defender Fee

(A) If the Court finds that the public defender client is able to pay part of the cost of representation by the assigned counsel, the court shall order the person to pay the following:

- (1) For a felony action, a fee of one hundred dollars (\$100.00).
- (2) For a misdemeanor action, a fee of fifty dollars (\$50.00).

(B) If at any stage of prosecution for a felony or misdemeanor the court makes a finding of ability to pay the costs of reasonable representation the court shall require payment by the person or person=s parent if delinquent, of the following attorney fees in addition to other costs assessed against the person:

- (1) For an A felony action, a fee not to exceed one thousand dollars (\$1,000.00).
- (2) For a B felony action, a fee not to exceed eight hundred dollars (\$800.00).
- (3) For a C felony action, a fee not to exceed six hundred dollars (\$600.00).
- (4) For a D felony action, a fee not to exceed four hundred dollars (\$400.00).
- (5) For all misdemeanor actions, a fee not to exceed two hundred dollars (\$200.00).

The Court will order the clerk=s office to withhold the reasonable attorney fee assessed by the court from the public defender client=s remaining bond deposit.

LR84-CR00-5 Discovery - Criminal Cases

In all criminal cases, discovery shall be governed by this rule. The Court will not rule on any motion for discovery if the subject matter of the motion is covered by this rule; the Court will, however, rule on motions for discovery of specific items of evidence that are not addressed by this rule.

- (A) The State shall disclose to the Defendant the following material information within its possession or control on or before thirty (30) days following the Initial Hearing:
 - (1) The names, last known addresses and telephone numbers of persons whom the State may call as witnesses together with

- (a) their relevant written or recorded statements.
 - (b) memoranda containing substantially verbatim reports of their oral statements (if any memoranda exists)
 - (c) memoranda reporting or summarizing oral statements (if such memoranda exists),
 - (d) a brief statement, normally not to exceed ten words, indicating the nature of each witness= involvement in the case; such statements may be no more than a reference to statements described in paragraphs (A) (1), (a), (b), or (c) above.
- (2) Any written or recorded statements and the substance of any oral statements made by the accused or by a co-defendant, and a list of witnesses to the making and acknowledgment of such statements.
- (3) A transcript of the recorded grand jury testimony of persons whom the prosecuting attorney may call as witnesses at a hearing or trial. A typed transcript of said testimony shall be provided if it is available.
- (4) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons.
- (5) Any books, papers, documents, photographs, or tangible objects which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused, together with the location of such items and an indication of appropriate means for defense counsel=s examination of same. Under

circumstances where chain of custody issues are readily apparent, such as drug cases, such chain shall be provided to the extent available on the disclosure date provided above and shall be supplemented:

- (a) upon Defendant=s written request,
- (b) by pre-trial conference, and
- (c) thereafter as ordered to complete such chain.

(6) Any arrest record or prior criminal convictions which may be used for impeachment of the persons whom the State intends to call as witnesses at the hearing or trial.

(7) A copy of any written agreement and the complete substance of any oral agreement made by the State with (a) any witnesses to secure their testimony or (b) any co-defendant or other person charged arising out of same incident.

(8) Any evidence which tends to negate the guilt of the accused as to the crime charged or tends to reduce the class of the act alleged or which would tend to mitigate his punishment.

(9) Evidence of other crimes which the State intends to use at trial, pursuant to Rule 404, Indiana Rules of Evidence.

- (B) (1) The State shall perform these obligations in any manner mutually agreeable to the Prosecutor=s Office and to defense counsel. The State shall provide legible copies of existing written statements described in paragraphs (A)(1), (2), (3), and (7). Other items shall be provided for examination, testing, copying, photographing, or other proper use either by agreement or at specified reasonable times and

places. Defense counsel shall provide reasonable notice of such examination and shall schedule these examinations in cooperation with the State. An application to the Court shall be made to obtain copies of audio or video tape. Said application shall state in specific terms the necessity for such copies.

(2) The State shall make a record of compliance with this order not more than five (5) days after the date set out in paragraph (A) above.

(C) Subject to Constitutional limitations, the defense shall disclose to the State the following material and information within its possession or control on or before thirty (30) days following the date that the State has provided to the defense the information required under this rule:

(1) The names, addresses and telephone numbers of persons whom the defendant may call as witnesses along with (a) a summary of their testimony similar to that described in (A)(1)(d), (b) record of prior criminal convictions, and (c) the relationship, if any, of the witness to the defendant or any co-defendant.

(2) Any books, papers, documents, photographs, or tangible objects which are intended to be used at a hearing or trial.

(3) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons insofar as permitted by law.

(4) A statement of defenses, procedural or substantive, the defendant intends to make at a hearing or trial. Such a statement shall not limit defendant=s right to file any defense defined by statute, such as alibi, insanity, etc., where a specific timetable for notice to the State is statutorily described.

- (D) (1) The defense shall perform these obligations in any manner mutually agreeable to the Prosecutor=s Office and to defense counsel. Defense shall provide the same documents in a fashion similar to the State=s obligations described in (B)(1).
- (2) The defense shall make a record of compliance with this order not more than five (5) days after the date set out in paragraph (C) above.
- (E) The Court anticipates that compliance will be deemed satisfactory unless failure to comply is brought to the Court=s attention by Motion to Compel. Sanctions for failure of compliance or violations of orders on Motion to Compel shall be pursuant to Trial Rule 37.
- (F) Nothing herein shall limit any party=s right to seek protective orders to avoid destruction or other loss of evidence, or to seek deposition at such times as they may desire.
- (G) (1) The Court may deny disclosure upon showing that:
- (a) A substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from such disclosure which outweighs any usefulness of the disclosure to counsel.
 - (b) There is a paramount interest in non-disclosure of an informant=s identity and a failure to disclose will not infringe the Constitutional rights of the accused. Disclosure of the identity of witnesses to be produced at a hearing or trial will be required.

- (2) Such determination of non-disclosure shall be by the Court and shall not be within the discretion of the State or defense. Such non-disclosure shall be sought by motion for protective order.
- (H) Disclosure shall not be required of:
 - (1) Any matter otherwise protected by law (however disclosing the identity of juvenile co-defendants or witnesses shall not be barred because of delinquency non-disclosure statutes).
 - (2) Work product of counsel including memoranda of opinions, theories, or research for themselves or from their legal or in-house investigative staff.
- (I) This discovery order is a continuing order through the trial of this cause and no written motion shall normally be required except to compel discovery for a protective order, or an extension of time.
- (J) Failure of either party to engage in and comply with discovery shall not be excused by the parties unsuccessful or incomplete efforts to enter into a plea agreement or other resolution of the case unless both parties waive in writing (1) compliance with this order for a specified period of time and (2) any speedy trial requirements.
- (K) Any cost for reproduction or transcripts under this order shall be borne by the party to whom the information is provided except that as to pauper counsel defendants the costs shall be borne by the State or County.
- (L) Depositions:
 - (1) Unless good cause is shown, depositions of lay witnesses shall be completed not later than two (2) weeks prior to the trial date.

(2.) Depositions of expert witnesses may be taken at any time.

Section V: PROBATE RULES

LR84-PR00-1 Pleadings and Prepared Orders

(A) Unless directed otherwise by the Court, counsel shall prepare all proposed Orders and provide sufficient copies to the Clerk.

(B) All pleadings shall be signed by the fiduciary and counsel.

LR84-PR00-2 Conversion of Unsupervised Estates to Supervised Estates

The Court shall have no involvement, other than for opening, closing, determining Indiana Inheritance Tax due and hearing Petitions regarding fees (if sought) in an Unsupervised Administration of a Decedent=s Estate. If the jurisdiction of the Court is invoked for any other matter, the Administration may become a Supervised Administration from there on for all remaining matters.

LR84-PR00-3 Inventory in Estates

(A) In all supervised estates, the personal representative shall file an inventory conforming with the requirements of I.C. 29-1-12-1 within two (2) months of appointment.

(B) In all unsupervised estates, the Personal Representative shall, within two (2) months of appointment, either: (1) file an inventory conforming with the requirements of I.C. 29-1-7.5-3.2(b), or (2) file a verified certification that an inventory conforming with the requirements of I.C. 29-1-7.5-3.2 has been prepared and is available to be furnished to distributees on request.

LR84-PR00-4 Maximum Fee Guidelines for Attorney and Personal Representative

Attorney and personal representative fees in supervised estates shall not exceed the amounts calculated pursuant to Sections I through IV of this rule.

I. Attorney Fees for Supervised Estate Administration:

Gross estate services are considered to normally include: probating the Will, opening the estate, qualifying the personal representative, preparing and filing the Inventory, paying claims, collecting assets, preparing and filing petitions, obtaining Court Orders thereon, sale of personal property, sale of real property, partial distribution, heirship determination, preparing and filing of Fiduciary Income Tax Return, preparing and filing all tax returns and schedules including those for Indiana Inheritance Tax and Federal Estate Tax and paying the taxes, preparing and filing the Final Report, obtaining Order approving same, distributing assets, obtaining discharge of the personal representative, and preparing and serving all notices on interested parties throughout the proceedings. The list shall not be considered to be exclusive.

A. Gross Probate Estate B Minimum Fee of \$2,000.00

First \$100,000.00, not to exceed----- 6%

Next \$100,000.00, not to exceed----- 5%

Next \$100,000.00, not to exceed----- 4%

Next \$700,000.00, not to exceed----- 3%

Excess of \$1,000,000.00, not to exceed----- 1%

- B. Non-Probate Assets - For handling matters concerning non-probate assets during the administration, the attorney representing the supervised estate may charge an additional fee as follows:

First \$100,000.00 of such assets, not to exceed----- 3%

Next \$100,000.00, not to exceed----- 2%

Excess of \$200,000.00 not to exceed----- 1%

- C. Extraordinary Fee Requests - Extraordinary services may include Will contest actions, contesting claims, other contested hearings, involved heirship determinations, and dealing with unusual and complex matters. The attorney must petition the Court for allowance of fees for such extraordinary services. All such petitions will be set for hearing, with notice to all interested parties. If all interested parties sign a waiver and consent stating they have been advised the additional fee request exceeds the Court=s guidelines and that the services as detailed are extraordinary, the Court may, in its discretion, determine if a hearing is required.

Extraordinary fees shall be considered based on an hourly rate taking into consideration the complexity of the matter and the attorney=s probate expertise.

II. Petition or Request for Attorney Fees Required in Supervised Estates.

- A. No fees may be paid without first submitting a Petition or Request for fees which shall include therein a work sheet or other calculation supporting the fees requested as being in accordance with this guideline

B. No attorney fees shall be approved until and unless an Indiana Inheritance Tax Return has been filed, if such is required by law, and then no more than fifty percent (50%) of the total anticipated fee can be requested.

III. Attorney fees in Miscellaneous Matters:

A. Death Tax Matters Only - When no estate administration is required, the preparation and filing of the Indiana Inheritance Tax Return and Federal Estate Tax Return, if applicable, and securing the respective clearances thereon shall entitle the attorney to a minimum fee of \$500.00 and a maximum fee as follows:

First \$500,000.00 of includable assets, not to exceed----- 2%

Excess of \$500,000.00 of includable assets, not to exceed-----1%

B. Other Miscellaneous matters such as spreading a will of record, petitioning for lock box opening to conduct a will search, etc. ----- Hourly rate

(Attorney=s expertise and the complexity of the matter should be considered in determining the applicable hourly rate.)

IV. Personal Representative Fees

A. Professional - Their applicable reasonable rate shall be reviewed in light of all prevailing circumstances.

B. Non-Professional - An amount not in excess of one-half (1/2) of the attorney=s fees.

C. Attorney as Personal Representative - When the attorney also serves as the personal representative, an additional amount not in excess of one-half of the attorney fee may be allowed.

LR84-PR00-5 Fees in Unsupervised Estates

No Attorney or Personal Representative fees will be determined and authorized for payment by the Court in any Unsupervised Administration of a Decedent=s Estate, unless a Petition for Fees or objection to fees is filed with the Court. If such Petition or objection is not filed, the Court will not become involved in the determination of fees in an Unsupervised Administration of a Decedent=s Estate. However, the Court expects compliance with these guidelines in general.

LR84-PR00-6 Wrongful Death Administration

The Court recognizes that in most instances a retainer or contingent fee agreement is an appropriate method by which legal services can be provided in wrongful death claims. Accordingly, fees shall be allowed under such agreements if, at the time of settlement of the claim, it is shown to the Court=s satisfaction:

A. That the Personal Representative was, prior to entering into such

agreement, fully informed as to all aspects of the arrangement.

B. That the agreement is fair and reasonable.

C. That the fee sought is fair and reasonable.

LR84-PR00-7 Guardianship Administration

Fees for the administration of guardianships shall be based on an hourly rate to be approved by the Court for both the attorney and the guardian. The Court will consider the attorney=s and guardian=s expertise in approving the hourly rate.

SECTION VI: SMALL CLAIMS

LR84-SC00-1 Scope

(2) **Scope.** Theses rule shall govern the procedure and practice of the Small Claims Divisions of the Vigo Superior Courts.

B. **Citation.** These rules may be cited as L.R.S.C._____. The small claims rules promulgated by the Indiana Supreme Court are hereinafter referred to as S.C._____; and the Indiana Rules of Trial Procedure are hereinafter referred to as T.R._____.

LR84-SC00-2 General Procedures

- A. **Conflict of Rules.** All proceedings in the Vigo Superior Courts, Small Claims Divisions, shall be governed by the Small Claims Rules promulgated by the Indiana Supreme Court and the local rules set forth herein. In instances where these local rules conflict with the rules promulgated by the Indiana Supreme Court, the latter shall control.
- B. **Tender of Completed Documentation and Proper Costs.** Parties or their attorneys are solely responsible to tender to the Court in complete and correct form any documents desired to be filed, together with proper costs, as determined by the Clerk. Neither the Court nor the Clerk will be responsible for delays or deadlines missed due to the tender of incomplete or incorrect documents or improper costs.
- C. **Copies of Motions and Orders.** The original and one copy of any motion and the original and three copies of the order (or sufficient copies to serve all parties) shall be filed. Excess copies of motions will not be returned to the filing party. See Rule 12-F for proceeding supplemental filing requirements.
- D. **Judgment Orders.** All judgment orders shall include an itemization of the amounts claimed (e.g., principal, interest, attorney fees, collection agency fees) as well as the total judgment not including court costs. Court costs shall be listed separately.
- E. **Multiple Claims with Same Defendant.** A Plaintiff shall not be allowed to file multiple cases naming the same defendant based on the same or similar transactions in order to circumvent the monetary jurisdictional limits of small claims court.
- F. **Appearance by Husband or Wife.** In cases where husband and wife are parties, except for hearings on proceeding supplemental involving garnishment or by contrary order of the Court, appearance by a party's spouse shall be considered

the appearance of the party upon the spouse's representation on the record that the party and the appearing spouse are currently married and living together.

- G. **Parties' Current Address.** Notice from the Court will be sent to the parties at the most recent address contained in the Court's file. The parties are solely responsible to maintain their current address in all files concerning them.

LR84-SC00-3 Forms

- A. **Court Forms.** The court shall from time to time draft forms for use of the parties in small claims actions.
- B. **No Other Forms.** Originals or photocopies of the forms described in S.C.L.R. 3A shall be acceptable for filing. Any other form or photocopy thereof presented to the Clerk shall be accepted for filing only if such form receives prior approval from the judge. In such instance, blank forms identical to that submitted and approved shall be immediately provided to the Clerk for future reference and comparison.

LR84-SC00-4 Change of Judge

A change of judge shall be granted as provided by statute and by T.R. 76 and 78.

LR84-SC00-5 Counterclaims Outside Small Claims Jurisdiction

- A. **Monetary Limit.** A defendant who has a counterclaim in excess of the monetary jurisdiction of the Small Claims Division who does not wish to waive the excess of the claim must file a motion to move the case to the plenary docket and pay the required fee.

- B. **Subject Matter Jurisdiction.** A defendant who has a counterclaim outside the subject matter jurisdiction of the Small Claims Division must file a motion to move the case to the plenary docket and pay the required fee.

LR84-SC00-6 Continuances

- A. **General Rule.** Either party may be granted a continuance for good cause shown. Except in unusual circumstances no party shall be allowed more than (1) continuance in any case, and all continuances must have the specific approval of the court. Continuances shall be for as short period as possible, and where feasible the party not requesting the continuance shall be considered in scheduling a new hearing date. The court shall give notice of the continuance and the new date and time of trial to all parties.
- B. **Possession of Real Estate or Personal Property.** No continuances will be granted to a defendant where the action involves the issue of possession of real estate or personal property, except for good cause approved by a judge.
- C. **Proceedings Supplemental.** No motion for continuance of a proceedings supplemental hearing will be granted, except by agreement of the parties, or for good cause approved by the judge.

LR84-SC00-7 Dismissal of Actions

- A. **Dismissal by Plaintiff.** Any claim may be dismissed by the plaintiff at any time before judgment has been entered unless a counterclaim has been filed by a defendant.

- B. Dismissal by Stipulation. Any claim may be dismissed by filing a stipulation of dismissal signed by all parties to the claim.
- C. Dismissal by the Court. The cause or any pending pleading in the cause may be dismissed with or without prejudice upon order of the Court, including by way of illustration and not limitation, as follows:
 - (1) the cause had not been reduced to judgment and there has been no action on the case for a period of sixty (60) days; provided however, that no such cause shall be dismissed without notice and hearing; or
 - (2) a proceedings supplemental pleading had been filed and there is no action on the day on which the proceedings supplemental is set for hearing, or for sixty (60) days thereafter. (Note: no 41E hearing required)

Motions to reinstate a case dismissed pursuant to this section shall be granted if filed within six months of the dismissal. Motions filed after six months shall be denied, and a new case may be filed.

LR84-SC00-8 Default

- A. Default of Defendant and Default Affidavit. Upon the failure of a defendant to appear at the initial court trial setting or at a trial on the merits, the plaintiff shall be entitled to judgment on the merits against the defendant.
- B. Default of Plaintiff. Upon the failure of a plaintiff to appear at the initial court trial setting or at a trial on the merits, the cause shall be dismissed without prejudice, and default judgment shall be entered for the defendant against the plaintiff on any timely-filed counterclaim. Upon plaintiff's failure to appear at the initial court trial setting or at a trial on the merits in the subsequent cause based on the same facts as the cause earlier dismissed without prejudice, the subsequent cause shall

be dismissed with prejudice and default judgment shall be entered for the defendant against the plaintiff on any timely-filed counterclaim.

- C. **Setting Aside Default Judgment.** A default judgment may be set aside according to the procedures set for in S.C. 10(c).

LR84-SC00-9 Attorney Fees

A request for attorney fees up to \$300.00 will be deemed reasonable regardless of the amount of the judgment. Any request for attorney fees over that amount must be supported by an affidavit setting forth the number of hours spent on the case and the hourly charge. The amount of attorney fees awarded shall be within the sound discretion of the Court.

No attorney fees shall be awarded unless:

provided for by written agreement between the parties or according to applicable statute(s).

The Court retains the discretion to adjust attorney fees even when the defendant signs an agreed judgment.

LR84-SC00-10 Judgment for Possession of Real Estate or Personal Property

- A. **Bifurcated Judgment and Expedited Hearing on Possession.** Judgment in actions involving the issue of possession of real estate or personal property shall be bifurcated. The initial hearing shall be on the possession issue. A final judgment for possession of the real estate or personal property shall be entered at the initial hearing and a judgment for back rent and/or other damages, if any, shall be entered at a subsequent hearing.

B. **Disposition of Tenant's Remaining Personal Property.** If a tenant leaves personal property of value in or about the premises under circumstances, which reasonably show abandonment of the personal property, the landlord may:

(1) remove the property from the premises using reasonable care and storing it in a location reasonably secure from damage of any kind; and

(2) immediately notify the tenant by first class mail to tenant's last known address, with a copy retained by the landlord, that the property is stored, that the storage charges (if any, but not to exceed \$3.00 per day) are accruing, and that the property is available to tenant upon reasonable notice to landlord at a reasonable time until the date of the hearing on damages. The notice shall also contain landlord's telephone number, and an address at which and reasonable time during which the landlord can be contacted.

(3) If the tenant has not contacted landlord to arrange an imminent and mutually convenient date and time for retrieval of tenant's personal property by the date of the damage hearing, a landlord may dispose of the property in a reasonable manner, including the destruction of apparently valueless property and the private sale or donation of property of value. Proceeds from any sale and credit for any donation shall first be applied to reduce any accrued storage charges and then to reduce any alleged back rent or damages beyond normal wear and tear established by the Court.

LR84-SC00-11 Release of Judgment

(A) **Release of Judgment.** Upon payment in full, including accrued interest, the clerk shall notify the judgment creditor and shall require him or her to file a release of judgment. If the judgment creditor fails to file a release within thirty (30) days of the issuance of the notice, the clerk shall enter on the Chronological Case

Summary that the judgment has been satisfied, the plaintiff has failed to release judgment pursuant to court directive, and the clerk shall enter a release of judgment in the judgment docket.

- (B) Failure to Release Judgment. Upon a judgment creditor's failure to release a judgment allegedly fully paid and satisfied, the affected debtor may file a motion with the Court to have the judgment deemed satisfied pursuant to T.R. 13(M).

LR84-SC00-12 Proceeding Supplemental

- A. General Procedure. Proceedings supplemental to execution shall be governed by T.R. 69(E) of the Indiana Rules of Trial Procedure and applicable statute.
- B. Thirty Day Rule. A motion for proceedings supplemental may not be filed until thirty (30) calendar days have elapsed since the date of judgment except by order of the Court for good cause shown.
- C. One Year Rule. Except by order of the Court for good cause shown, no proceedings supplemental may pend for more than six (6) months from the date of its filing and no judgment creditor may file more than four (4) proceedings supplemental per year against any individual judgment debtor in a given cause. At the end of the six (6) month period, any pending proceedings supplemental shall be dismissed without prejudice.
- D. Bank Interrogatories. Except by order of the Court for good cause shown, judgment creditors may not submit garnishment interrogatories to more than two (2) banking institution for each hearing on proceeding supplemental.

- E. Proceedings Supplemental During Pendency of Garnishment Order. If a garnishment order has been issued, additional proceedings supplemental directed to the judgment debtor may be filed only by order of the Court for good cause shown.
- F. Copies of Motion and Order. Three copies of motions for proceeding supplemental, orders and subpoenas shall be filed. If a garnishee defendant is named, then four copies of each document shall be filed. Please call the civil court reporter for the hearing date prior to filing.

LR84-SC00-13 Bench Warrants

- A. Motion for Bench Warrant. A Plaintiff may request a bench warrant if :
 - (1) the judgment debtor or garnishee defendant previously ordered to appear for a scheduled hearing was served with an order to appear and failed to appear for the hearing.
 - (2) The party requesting the warrant can provide the judgment debtor's Social Security number and/ or date of birth.
- B. Procedure. The Court will send a notice to the defendant that the defendant must contact the court within ten days or the warrant will be issued.
No ten-day notice will be issued if the defendant fails to appear for the rescheduled hearing.

LR84-SC00-14 Garnishment

- A. General Procedure. All garnishment proceedings shall comply with T.R. 69(e) and applicable statutes.

B. Requirements of Garnishment Order to Issue. A garnishment order shall not issue with respect to a judgment debtor's wage or other property without:

(1) an active proceedings supplemental as to the judgment debtor or waiver of notice by the judgment debtor and

(2) service on the garnishee-defendant by:

a. certified mail, or refusal thereof, or

b. Sheriff's service, or

c. private process service; and

d. return of answered interrogatories, other verification of employment by garnishee-defendant, or failure to answer interrogatories after notice.

C. Stay of Garnishment. In instances where a judgment debtor has entered a voluntary agreement for periodic payment to satisfy the judgment and has further consented to garnishment upon default of the terms of the agreement, a garnishment order will be entered but stayed pending compliance with the payment agreement.

Upon notice by the judgment creditor that the judgment debtor is not in compliance, the order of garnishment will be issued.

E. Release. Upon receipt by the judgment creditor or by the Clerk on the judgment creditor's behalf of monies sufficient to fully satisfy the judgment, any accrued interest and costs, the judgment creditor shall immediately obtain a court order releasing the applicable garnishment order and shall forward a copy to garnishee-defendant(s).

Whenever any party receives an order from a Bankruptcy Court staying proceedings, that party shall file a notice of such order with the Court. Such notice shall contain the name of the party, the cause number in bankruptcy and the date of the issuance of the stay.

LR84-SC8-16 Representation at Trial-Attorneys

- A. Small Claims Rule 8(C) allows a person to appear at trial and, if he or she chooses, represent himself or herself and avoid the cost of hiring an attorney. However, a person is allowed to hire an attorney and have the attorney appear with him or her at trial. A person who holds a power of attorney for another person may not represent that person in court.
- B. Corporations-Representation in Small Claims Court. As a general rule, a corporation must appear by counsel. S.C. Rule 8(C) provides a limited exception for certain claims. A corporation, whether as a Plaintiff or a Defendant, may be represented by an employee who is not an attorney if the following conditions exist:
 - 1. The claim (for or against the corporation) is not more than the prescribed limit set by S.C. Rule 8(C) (currently \$1,500.00); and
 - 2. The claim is not an assignment (such as a claim that has been assigned to a collection agency); and
 - 3. There is a corporate resolution and employee affidavit on file with the clerk authorizing a full-time employee to represent the corporation. The clerk will provide the affidavit form.
- C. Sole Proprietors and Partnerships (Unincorporated Businesses). As a general rule, an unincorporated business must be represented by the owner of the business or an attorney. S.C. Rule 8(C) provides a limited exception for certain claims. A business, operated as a sole proprietor or partnership, may (whether as a Plaintiff

or Defendant) be represented by an employee who is not an attorney if the following conditions exist:

1. The claim (for or against the business) is not more than the prescribed limit set by S.C. Rule 8(C) (currently \$1,500.00); and
2. The claim is not an assignment (such as a claim that has been assigned to a collection agency); and
3. The business has on file with the clerk an employee affidavit and certificate of compliance designating a full-time employee to represent the business. The clerk will provide the affidavit form.

The person who is named in an affidavit and files the claim must be the individual who appears in court. If circumstances dictate that another employee must make the court appearance, a resolution and affidavit must be filed with the Clerk before the court date and a copy made available to the Court.

LR84-SC00-17 Private Process Serving Fees.

Costs for private process servers that may be assessed against a judgment debtor are limited to the fee approved for service by sheriff.

Section VII: ADMINISTRATIVE RULES

LR84-AR00-1 Court Hours

Each Court shall be open to the public daily during regular business days, Monday through Friday. The Presiding Judge of each respective Division shall designate a schedule of business hours for said respective Divisions as the respective Court=s Docket allows and is in the best interests of the public and Court. Except when otherwise designated, the Courts shall be open until 4:00 p.m. on each business day. If any Division of the Court

finds it necessary to remain in session until after 4:00 p.m., no member of the staff of that Division shall leave for the day except upon permission of the presiding Judge.

LR84-AR01-2 Case Assignments

(A) CRIMINAL CASES shall be filed pursuant to LR84-CR2.2-2.

(B) CIVIL CASES

(1) DISSOLUTION ACTIONS (DR)

The filing of dissolution actions shall be filed in the following proportionate rotation:

Vigo Superior Court Division Two	50%
Vigo Superior Court Division One	16.66%
Vigo Superior Court Division Three	16.66%
Vigo Superior Court Division Six	16.66%

(2) PROBATE

The filing of probate matters shall be filed in the following proportionate rotation:

Vigo Superior Court Division One	33.33%
Vigo Superior Court Division Two	33.33%
Vigo Superior Court Division Three	33.33%

(3) CIVIL TORT (CT)

The filing of civil tort actions shall be filed in the following proportionate rotation:

Vigo Superior Court Division Six	50%
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Vigo Superior Court Division One	16.66%
Vigo Superior Court Division Two	16.66%
Vigo Superior Court Division Three	16.66%

(4) CIVIL PLENARY (PL)

The filing of civil plenary actions shall be filed in the following proportionate rotation:

Vigo Superior Court Division One	40%
Vigo Superior Court Division Two	20%
Vigo Superior Court Division Three	20%
Vigo Superior Court Division Four	20%

(5) CIVIL COLLECTIONS (CC)

The filing of civil collection actions shall be divided equally among all Vigo Superior Courts
on a random rotation basis.

(6) MORTGAGE FORECLOSURES (MF)

The filing of mortgage foreclosures shall be filed in the following proportionate rotation:

Vigo Superior Court Division Three	33.33%
Vigo Superior Court Division One	16.66%
Vigo Superior Court Division Two	16.66%
Vigo Superior Court Division Four	16.66%
Vigo Superior Court Division Six	16.66%

(7) SMALL CLAIMS (SC)

The filing of small claims actions shall be in the following proportionate rotation:

Vigo Superior Court Division 4	60%
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(8) PROTECTIVE ORDERS (PO)

Petitions for protection orders and workplace restraining orders shall be filed in Vigo Superior Court Division 4 except for protection order petitions filed by a party:

1. To a pending marriage dissolution case or to a marriage dissolution case in which a decree has been entered and there are minor children to the parties. These petitions shall be filed in the Court presiding over the dissolution action.
2. To a pending paternity case or who is a juvenile or naming a juvenile as respondent. These cases shall be filed in Juvenile Court.

(9) MENTAL HEALTH CASES (MH)

All mental health cases filed shall be in Vigo Superior Court Division 2.

(10) JUVENILE COURT (JP)

To the extent of its jurisdiction, all juvenile matters shall be filed in the Juvenile Division of the Vigo Circuit Court.

As in the past, Vigo County Judges shall continue to cooperate with one another to insure the effective and efficient administration of justice by assisting one another with hearings, should they be available to do so.

LR84-AR9-3 Confidentiality of Court Records

(A) Search Warrants

All search warrants shall be confidential prior to return of duly executed service.

(B) Arrest Warrants

All arrest warrants for criminal offenses shall be confidential prior to return of duly executed service, unless in a particular case, the State applies for an Order lifting confidentiality in order to facilitate the peaceful surrender of the person for whom the arrest warrant was issued.

(C) Indictments and Informations

Only those informations filed after, or contemporaneously with, the issuance of an arrest warrant after a finding of probable cause shall be confidential prior to duly executed service. All indictments shall be confidential prior to the return of duly executed service.

LR84-AR11-4 Form and Style of Papers, Number of Copies, Filing and Services

(A) In order that the files of the Clerk's office may be kept under the system commonly known as Aflat filing®, all papers presented to the Clerk of the Judge for filing shall be 8 1/2" x 11", flat and unfolded. (Original oversized documents may be filed as part of a pleading; however, all copies shall be reduced to 8 1/2" x 11" where possible.) Typewritten pages shall have no covers nor backs and shall be fastened together at the top and at no other place. All pleadings shall be typewritten on unlined, opaque paper, single spaced with double spacing between paragraphs. Briefs and instructions shall be double spaced.

(B) All orders submitted to the Court shall be in sufficient number that the original may be retained by the Clerk and a copy mailed to each affected party. The original order shall be on at least fifty percent (50%) rag bond paper.

(C) The use of fill-in the blank or photocopied forms is not encouraged and such will be accepted for filing only if legible, clearly understandable and not altered by striking over and/or erasing.

LR84-AR12-5**Filing By Facsimile Transmission**

Pleadings, motions and other papers may be filed by Facsimile Transmission as provided by Indiana Administrative Rule 12; the Court, by Facsimile Transmission, may issue orders or other responses thereto. All Facsimile Transmissions, by a party or the Court, shall be considered as being mailed for purposes of computing time under T.R. 6(E).

LR84-AR15-6**Court Reporter Services**

(A) Definitions. The following definitions shall apply under the local rule.

- (1) A Court Reporter is a person who is specifically designated by a court to perform the official court reporting services for the court including preparing a transcript of the record.
- (2) Equipment means all physical items owned by the court or other government entity and used by a court reporter in performing court reporting services. Equipment shall include, but not limited to, telephones, computer hardware, software programs, disks, tapes, and any other device used for recording and storing and transcribing electronic data.
- (3) Work space means that portion of the court=s facilities dedicated to each court reporter, including but not limited to actual space in the courtroom and any designated office space.
- (4) Page means the page unit of transcript which results when a recording is transcribed in the form required by Indiana rule of Appellate Procedure 7.2.
- (5) Recording means the electronic, mechanical, stenographic or other recording made as required by Indiana rule of Appellate Procedure 74.

- (6) Regular hours worked means those hours which the court is regularly scheduled to work during any given week. Depending on the particular court, these hours may vary from court to court within the county but remain the same for each work week.
- (7) Gap hours worked means those hours worked that are in excess of the regular hours worked but hours not in excess of forty (40) hours per work week.
- (8) Overtime hours worked means those hours worked that are in excess of forty (40) hours per work week.
- (9) Work weeks means a seven (7) consecutive day week that consistently begins and ends on the same days throughout the year; i.e. Sunday through Saturday, Wednesday through Thursday, Friday through Thursday.
- (10) Court means the particular court for which the court reporter performs services. Court may also mean all of the courts in Vigo County.
- (11) County indigent transcript means a transcript that is paid for from county funds and is on behalf of a litigant who has been declared indigent by a court.
- (12) State indigent transcript means a transcript that is paid for from state funds and is for the use on behalf of a litigant who has been declared indigent by a court.
- (13) Private transcript means a transcript, including but not limited to a deposition transcript, that is paid for by a private party.

- (14) Expedited transcript means a transcript which is requested to be prepared within three (3) working days or less.

(B) Salaries and Per Page Fees.

- (1) Court Reporters shall be paid an annual salary for time spent working under the control, direction, and direct supervision of their supervising court during any regular working hours, gap hours, or overtime hours. The supervising court shall compensate court reporters for gap and overtime hours by allowing compensatory time off regular work hours.
- (2) The maximum per page fee a court reporter may charge for the preparation of a county or state indigent transcript shall be \$4.00 per page; the court reporter shall submit a claim directly to the county for the preparation of any county indigent transcripts.
- (3) The maximum per page a court reporter may charge for the preparation of a private transcript shall be \$4.00 per page for a private regular transcript. If a court reporter is requested to prepare an expedited transcript, the maximum page fee shall be \$6.50 when the transcript must be prepared within twenty-four (24) hours or less; \$5.00 when the transcript must be prepared within three (3) working days. That a minimum transcript fee shall be \$35.00. That said transcript fee shall be retroactive to the 25th day of July, 2001.
- (4) In light of the various additional requirements under the new appeal process, the court shall provide binders for said transcripts so prepared.
- (5) In the event a court reporter prepares a transcript using county owned equipment, the court reporter shall provide the paper at the court reporter=s

own expense and provide copies of the transcript using an outside copying service at the court reporter=s own expense.

- (6) Each court reporter shall report, at least on an annual basis, all transcript fees received for the preparation of either county indigent, state indigent, or private transcripts to the Indiana Supreme Court Division of State Court Administration. The reporting shall be made on forms prescribed by the Division of State Court Administration.

(C) Private Practice

- (1) If a court reporter elects to engage in private practice through the recording of a deposition and/or preparing of a deposition transcript, and the court reporter desires to utilize the court=s equipment, work space, and supplies, and the court agrees to the use of the court=s equipment for such purpose, the court and the court reporter shall enter into a written agreement which must, at a minimum, designate the following:
 - (a) The reasonable market rate for the use of equipment, work space, and supplies.
 - (b) The method by which records are to kept for the use of equipment, work space, and supplies.
 - (c) The method by which the court reporter is to reimburse the court for the use of the equipment, work space, and supplies.
- (2) If a court reporter elects to engage in private practice through the recording of a deposition and/or preparing of a deposition transcript, all such private practice work shall be conducted outside of regular working hours.

LR84-AR 15-7 Court Alcohol and Drug Program Fees

All individuals ordered to enroll in the Vigo County Court Alcohol and Drug Program may be charged up to a maximum of \$400.00 for program services, pursuant to Indiana Code 12-23-14-16.

Appendix A

STATE OF INDIANA)

)SS:

COUNTY OF)

IN THE _____ COURT

200__ TERM

Plaintiff

-VS-

Defendant

CAUSE NO. _____

APPOINTMENT OF SPECIAL JUDGE

_____, Presiding Judge for the Administrative District 7, having received certification requiring reassignment of a special judge, now appoints The Honorable _____, as Special Judge in this Cause.

SO ORDERED this _____ day of _____, 200__.

_____, Presiding Judge
Administrative District 7

Distribution:

_____, Special Judge
_____, Atty.
_____, Atty.